

IT IS HEREBY ORDERED, for the reasons stated on the record, that

ORDER TO ENFORCEMENT OF ORDER GRANTING PLAINTIFFS  
Defendants' Request for a Stay of this pending appeal is denied.  
MOTION FOR PRELIMINARY INJUNCTION AND OTHER RELIEF DESCRIBED  
IN THE ORDER IS DENIED.

IT IS SO ORDERED

*Rosemarie E. Aquilina*  
HON. ROSEMARIE E. AQUILINA  
COURT OF CLAIMS JUDGE  
P37670

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30212  
LANSING, MICHIGAN 48909

BILL SCHUETTE  
ATTORNEY GENERAL

July 19, 2013

Ms. Kimberly S. Hauser  
Michigan Court of Appeals  
Hall of Justice  
925 W. Ottawa St.  
P.O. Box 30022  
Lansing, MI 48909-7522

Re: *Webster v Snyder*, Ingham County Circuit Court No. 13-734-CZ, COA  
Docket Nos 317286, 317292; *Flowers v Snyder*, Ingham County Circuit  
Court No. 13-729-CZ, COA Docket No. 317285; *The General*  
*Retirement System of the City of Detroit v Orr*, Ingham County Circuit  
Court No. 13-768-CZ, COA Docket No. 317284;

Dear Clerk Hauser:

As the Court is aware from our filings on behalf of Governor Snyder, Emergency Manager Orr, Treasurer Dillon, and the State of Michigan earlier today, Judge Aquilina of the Ingham County Circuit Court issued temporary-restraining and preliminary-injunction orders yesterday after the Governor had already authorized and Emergency Manager Orr had already filed a Chapter 9 bankruptcy petition on behalf of the City of Detroit. In our three applications for leave to appeal and accompanying motions, we ask the Court to stay the effect of the orders and stay all further trial-court proceedings.

A short time ago, Judge Aquilina concluded additional proceedings in these matters. In *Webster v Snyder*, Judge Aquilina entered final judgment on plaintiffs' claim for declaratory relief, denied the State's motions for summary disposition and for stay, and directed that her orders be transmitted directly to the President of the United States. In *Flowers v Snyder*, Judge Aquilina amended her previously issued preliminary injunction, and denied the State's motions for summary disposition and again denied motions for stay.

These are extraordinary actions, because Judge Aquilina has no legal basis to enter orders of any kind. As explained in the application for leave filed in *The*

[Addressee]

Page 2

[Date]

*General Retirement System of the City of Detroit v Orr*, there is an automatic stay in place by virtue of the bankruptcy filing. In addition, Judge Aquilina did not even consider the factors for injunctive relief. And plaintiffs cannot show a likelihood of success on the merits (their claims are not yet ripe and can be litigated fully in the bankruptcy court), there is no danger of irreparable harm (for the same reasons), the harm to defendants' executive branch power outweighs any potential harm to plaintiffs (since they can litigate all of their claims in the bankruptcy court), and the harm to the public is immense.

These proceedings could not be more high stakes. The City of Detroit is in the most desperate financial straits, with estimated debt of \$18 to \$20 billion, roughly \$24,000 per City resident. If Detroit were a state, its debt load would exceed that of 43 other states. And due to the City of Detroit's unsustainable debt load, the City has lost the ability to provide even the most basic services to its residents. Citizens wait an average of 58 minutes for the police to respond to their calls. Only 8.7% of criminal cases are solved. In the first quarter of 2013, 40% of the City's street lights were not functioning, and only one-third of the City's ambulances were in service. The bankruptcy is essential to Detroit being able to serve the basic health and safety needs of its citizens.

Enclosed is the final judgment in the *Webster* case, as well as all other orders entered today by the trial court in these cases, and accompanying motion for emergency consideration and consolidation. Defendants seek an immediate stay of *all* trial court orders in these cases, and a stay of *all* further trial court proceedings. I am available 24-7 at 517.898.5986 if the Court would like to conduct a telephonic hearing, or requires any additional information.

Sincerely,

/s/John J. Bursch

Michigan Solicitor General  
Solicitor General Bureau

[Writer/typist initials]

[Enclosure or Enclosures or Enc. or Enc. (#)]

cc: [Name]

[Tracer Line]

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STATE OF MICHIGAN  
IN THE 30<sup>TH</sup> CIRCUIT COURT FOR THE COUNTY OF INGHAM

FLOWERS, ETAL

Plaintiff,

v

RICK SNYDER, ETAL

Defendant.

ORDER

HON. ROSEMARIE E. AQUILINA

Docket No: 13-729-CZ

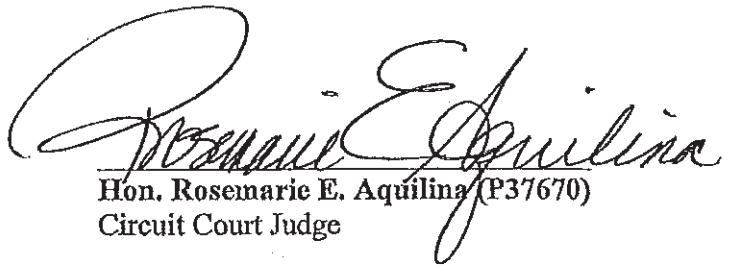
At a session of said Court in the City  
of Lansing, County of Ingham, State of Michigan,  
this 19 day of July, 2011

PRESENT: The Honorable Rosemarie E. Aquilina  
30<sup>th</sup> Judicial Circuit Court Judge

Upon review of motion, and a hearing being held in open court, and argument having  
been heard, and being fully apprised of the issues, states the following:

IT IS ORDERED that DEFENDANTS' MOTION TO STAY, PENDING  
ENFORCEMENT OF  
APPEAL, THE COURT'S ORDER GRANTING PLAINTIFFS'  
MOTION FOR PRELIMINARY INJUNCTION AND THE ORDER  
OF PRELIMINARY INJUNCTION IS DENIED FOR THE  
REASONS STATED FROM THE BENCH.

IT IS SO ORDERED.

  
Hon. Rosemarie E. Aquilina (P37670)  
Circuit Court Judge

Approved as to form: \_\_\_\_\_

Plaintiff / Plaintiff's Attorney

Defendant / Defendant's Attorney

STATE OF MICHIGAN

IN THE 30<sup>TH</sup> CIRCUIT COURT FOR THE COUNTY OF INGHAM

FLOWERS, ET AL

Plaintiff,

v

RICK SNYDER, ET AL

Defendant.

ORDER

HON. ROSEMARIE E. AQUILINA

Docket No: 13-729-CZ

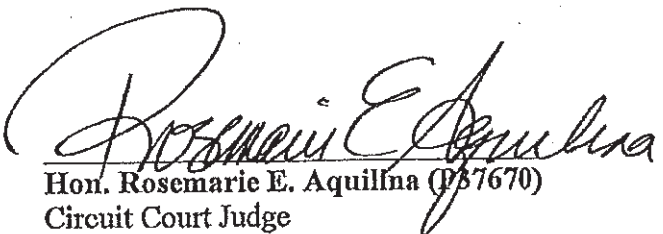
At a session of said Court in the City  
of Lansing, County of Ingham, State of Michigan,  
this 19 day of July, 2011

PRESENT: The Honorable Rosemarie E. Aquilina  
30<sup>th</sup> Judicial Circuit Court Judge

Upon review of motion, and a hearing being held in open court, and argument having  
been heard, and being fully apprised of the issues, states the following:

IT IS ORDERED that DEFENDANTS' MOTION FOR SUMMARY  
DISPOSITION IS DENIED FOR THE REASONS STATED  
FROM THE BENCH.

IT IS SO ORDERED.

  
Hon. Rosemarie E. Aquilina (P37670)  
Circuit Court Judge

Approved as to form: \_\_\_\_\_  
Plaintiff / Plaintiff's Attorney

\_\_\_\_\_  
Defendant / Defendant's Attorney

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

ROBBIE FLOWERS, MICHAEL WELLS,  
JANET WHITSON, MARY WASHINGTON and  
BRUCE GOLDMAN

Plaintiffs,

vs.

Case No. 13-729-CZ  
Hon. Rosemarie Aquilina

RICK SNYDER, as the Governor of the State  
of Michigan; ANDY DILLON, as the Treasurer of  
the State of Michigan; and the STATE OF MICHIGAN,

Defendants.

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*Amended*  
PRELIMINARY INJUNCTION

At a session of the Court, held in the City of Lansing,  
County of Ingham, State of Michigan

on 19 July 13

PRESENT: Hon. Rosemarie E. Aquilina  
CIRCUIT COURT JUDGE

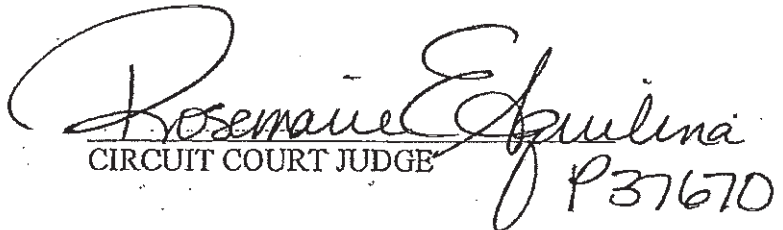
This matter having come before the Court on Plaintiffs' Amended Verified Complaint and Motion for a Preliminary Injunction; the Court being fully advised in the premises; Plaintiffs having shown a likelihood of success on the merits of the claims in Plaintiffs' Complaint; Plaintiffs having adequately shown that a failure to immediately issue a Preliminary Injunction will cause irreparable injury to Plaintiffs by permitting the Governor and the State Treasurer ("Defendants") to authorize or otherwise proceed with Chapter 9 bankruptcy petition on behalf of the City of Detroit, or to aid in such a proceeding, wherein Plaintiffs' accrued financial benefits will be impaired; and the Court being otherwise fully informed in the premises and finding good cause:

IT IS HEREBY ORDERED that Plaintiffs' Motion is granted;

IT IS FURTHER ORDERED that Defendants are immediately and preliminarily enjoined and restrained from taking any action as to the authorization of a Chapter 9 bankruptcy proceeding for the City of Detroit and/or the filing of a Chapter 9 bankruptcy petition, or any action in aid and assistance as to the same;

IT IS FURTHER ORDERED that this preliminary injunction shall remain in full force and effect until further order of the Court.

IT IS SO ORDERED.

  
CIRCUIT COURT JUDGE P37670

DATE: 19 July 13

TIME: 11:30 a.m.

STATE OF MICHIGAN  
IN THE 30<sup>TH</sup> CIRCUIT COURT FOR THE COUNTY OF INGHAM

WEBSTER, ETAL

Plaintiff,

v.

RICK SNYDER, ETAL

Defendant.

ORDER

HON. ROSEMARIE E. AQUILINA

Docket No: 13-734-C2

At a session of said Court in the City  
of Lansing, County of Ingham, State of Michigan,  
this 19 day of July, 2011

PRESENT: The Honorable Rosemarie E. Aquilina  
30<sup>th</sup> Judicial Circuit Court Judge

Upon review of motion, and a hearing being held in open court, and argument having  
been heard, and being fully apprised of the issues, states the following:

IT IS ORDERED that DEFENDANTS' MOTION FOR SUMMARY  
DISPOSITION IS DENIED FOR THE REASONS STATED  
FROM THE BENCH.

IT IS SO ORDERED.

  
Hon. Rosemarie E. Aquilina (P37670)  
Circuit Court Judge

Approved as to form:

\_\_\_\_\_  
Plaintiff / Plaintiff's Attorney

\_\_\_\_\_  
Defendant / Defendant's Attorney



STATE OF MICHIGAN

IN THE 30<sup>TH</sup> CIRCUIT COURT FOR THE COUNTY OF INGHAM

WEBSTER, ET AL

Plaintiff,

v

RICK SNYDER, ET AL

Defendant.

ORDER

HON. ROSEMARIE E. AQUILINA

Docket No: 13-734-C2

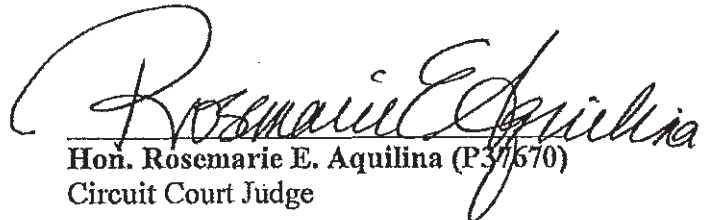
At a session of said Court in the City  
of Lansing, County of Ingham, State of Michigan,  
this 19 day of July, 2011

PRESENT: The Honorable Rosemarie E. Aquilina  
30<sup>th</sup> Judicial Circuit Court Judge

Upon review of motion, and a hearing being held in open court, and argument having  
been heard, and being fully apprised of the issues, states the following:

IT IS ORDERED that DEFENDANTS' MOTION TO STAY, PENDING  
APPEAL, THE ENFORCEMENT OF THE COURT'S ORDER  
GRANTING PLAINTIFFS' MOTION FOR DECLARATORY  
JUDGMENT AND THE ORDER OF DECLARATORY JUDGMENT  
IS DENIED FOR THE REASONS STATED FROM THE  
BENCH.

IT IS SO ORDERED.

  
Hon. Rosemarie E. Aquilina (P37670)  
Circuit Court Judge

Approved as to form:

Plaintiff / Plaintiff's Attorney

Defendant / Defendant's Attorney

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

GRACIE WEBSTER and  
VERONICA THOMAS,

Plaintiffs,

vs

Case No. 13-734-CZ  
Hon. Rosemarie Aquilina

THE STATE OF MICHIGAN;  
RICHARD SNYDER, as Governor  
of the State of Michigan; and  
ANDY DILLON, as Treasurer of  
the State of Michigan,

Defendants.

---

ORDER OF DECLARATORY JUDGMENT

At a session of said Court held in Ingham County Circuit Court,  
State of Michigan, this 19<sup>th</sup> day of July, 2013.

PRESENT:

  
Circuit Court Judge

Plaintiffs request declaratory relief pursuant to MCR 2.605 concerning (1) the constitutionality under Article IX Section 24 of the Michigan Constitution of the Local Financial Stability and Choice Act, 2012 PA 436, MCL 141.1541, *et seq.* ("PA 436"), insofar as PA 436 permits the Governor to authorize an emergency manager to proceed under chapter 9 of the bankruptcy code, chapter 9 of title 11 of the United States Code, 29 USC 901 to 946 ("Chapter 9") in a manner which threatens to diminish or impair accrued pension benefits; and (2) the

authority of the Governor and/or State Treasurer to authorize an emergency manager to proceed under Chapter 9 in a manner which threatens to diminish or impair accrued pension benefits.

Plaintiffs have requested, and Defendants have agreed in their Response, that the hearing in this matter may be advanced pursuant to MCR 2.605(D) and the court finds that expedited treatment is appropriate and that final declaratory relief is proper at this time.

The Court having reviewed the parties filings and submissions, and having heard oral argument by counsel for the parties, and being otherwise fully advised in the premises, and for the reasons stated on the record,

**IT IS HEREBY ORDERED:**

PA 436 is unconstitutional and in violation of Article IX Section 24 of the Michigan Constitution to the extent that it permits the Governor to authorize an emergency manager to proceed under Chapter 9 in any manner which threatens to diminish or impair accrued pension benefits; and PA 436 is to that extent of no force or effect;

The Governor is prohibited by Article IX Section 24 of the Michigan Constitution from authorizing an emergency manager under PA 436 to proceed under Chapter 9 in a manner which threatens to diminish or impair accrued pension benefits, and any such action by the Governor is without authority and in violation of Article IX Section 24 of the Michigan Constitution.

On July 16, 2013, City of Detroit Emergency Manager Kevyn Orr submitted a recommendation to Defendant Governor Snyder and Defendant Treasurer Dillon pursuant to Section 18(1) of PA 436 to proceed under Chapter 9, which together with the facts presented in Plaintiffs' filings, reflect that Emergency Manager Orr intended to diminish or impair accrued pension benefits if he were authorized to proceed under Chapter 9. On July 18, 2013, Defendant

Governor Snyder approved the Emergency Manager's recommendation without placing any contingencies on a Chapter 9 filing by the Emergency Manager; and the Emergency Manager filed a Chapter 9 petition shortly thereafter. By authorizing the Emergency Manager to proceed under Chapter 9 to diminish or impair accrued pension benefits, Defendant Snyder acted without authority under Michigan law and in violation of Article IX Section 24 of the Michigan Constitution.

In order to rectify his unauthorized and unconstitutional actions described above, the Governor must (1) direct the Emergency Manager to immediately withdraw the Chapter 9 petition filed on July 18, and (2) not authorize any further Chapter 9 filing which threatens to diminish or impair accrued pension benefits.

*A copy of this Order shall be transmitted to President Obama.*

*It is so Ordered.*

*Rosemarie E. Aquilina*  
P37670

Circuit Court Judge

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STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

THE GENERAL RETIREMENT SYSTEM  
OF THE CITY OF DETROIT, and THE  
POLICE AND FIRE RETIREMENT  
SYSTEM OF THE CITY OF DETROIT,

Plaintiffs,

Case No. 13-768-CZ

vs.

Hon. Rosemarie E. Aquilina

KEVYN D. ORR, in his official capacity as the  
EMERGENCY MANAGER OF THE CITY OF  
DETROIT, and RICHARD SNYDER, in his  
official capacity as the GOVERNOR OF THE  
STATE OF MICHIGAN,

Defendants.

Ronald A. King (P45088)  
Aaron O. Matthews (P64744)  
Michael J. Pattwell (P72419)  
CLARK HILL PLC  
212 East Grand River Avenue  
Lansing, Michigan 48906  
(517) 318-3100  
Attorneys for Plaintiffs

AMENDED TEMPORARY RESTRAINING ORDER

At a session of said Court, held in the City of  
Lansing, County of Ingham, State of Michigan  
on 19 July 13

PRESENT: HON.

Rosemarie E. Aquilina  
CIRCUIT COURT JUDGE

This matter having come before the Court on Plaintiffs' Complaint with verification and  
*Ex-Parte* Motion for a Temporary Restraining Order and oral *ex-parte* motion for amendment to  
the Temporary Restraining Order entered by the Court on July 18, 2013; the Court being fully

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advised in the premises; Plaintiffs having shown a likelihood of success on the merits of the claims in Plaintiffs' Complaint; Plaintiffs having adequately shown that a failure to immediately issue a Temporary Restraining Order will cause irreparable injury to Plaintiffs by permitting the Governor and the Emergency Manager ("Defendants") to authorize and file a Chapter 9 bankruptcy petition, plan of adjustment, and/or other bankruptcy filings whereby Plaintiffs' accrued financial benefits may be impaired; and the Court being otherwise fully informed in the premises and finding good cause:

IT IS HEREBY ORDERED that Plaintiffs' Motion is granted;

IT IS FURTHER ORDERED that Defendants <sup>and their agents and representatives</sup> are immediately and temporarily enjoined and restrained from taking any further action that may: (i) cause or further the accrued financial benefits of the Retirement Systems or their participants from in any way being diminished or impaired as mandated by Article IX, section 24, of the Michigan Constitution; or (ii) otherwise abrogates Article IX, section 24, of the Michigan Constitution;

IT IS FURTHER ORDERED that Defendants <sup>and their agents and representatives</sup> are immediately and temporarily enjoined and restrained from filing with the United States Bankruptcy Court a plan of adjustment or any other filing pursuant to Chapter 9 of the United States bankruptcy code which seeks to impair or diminish the accrued financial benefits of the Retirement Systems or their participants;

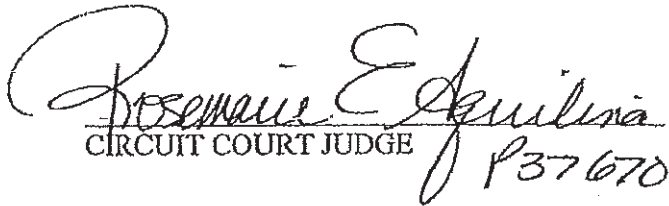
IT IS FURTHER ORDERED that the Court shall hold a hearing on July 22, 2013 at 9:00 a.m. whereby Defendants shall show cause why a Preliminary Injunction shall not issue; and

IT IS FURTHER ORDERED that this temporary restraining order shall remain in full force and effect until 22 Aug. 2013 at 5:00 p.m.

IT IS SO ORDERED.

DATE: 19 July 13

TIME: 12<sup>30</sup> PM

  
CIRCUIT COURT JUDGE P37670

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Lower Court or Tribunal Ingham Circuit Court	<b>STATE OF MICHIGAN IN THE COURT OF APPEALS</b>  <b>Cover Sheet</b>	<b>CASE NO.</b>	Year	Number	Case Type
		CIRCUIT:	13	734	CZ
		COURT OF APPEALS:			

Filing Party Last Name or Business/Entity/Agency Name  
Michigan Department of Attorney General

Filing Party First Name M.I.

Address (Street 1, Street 2, City, State, and ZIP Code)

Attorney Last Name  
Meingast

Attorney First Name M.I. P Number  
Heather 55439

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525 W. Ottawa, 4th Floor

Lansing MI 48913

Attorney Telephone Number  
(517)373-4875

Type	Filename/Description	Filing Fee	Doc Fee	Total This Filing
Application	Emergency Application for Leave to Appeal	\$5.00	---	\$5.00
Fee Substitute/Alternate Payment		3% Service Fee:		\$0.15
		Total All Filings:		\$5.15

- Reason:
- ☐ Appointed Counsel
  - ☐ Motion To Waive Fee
  - ☐ Fees Waived in this Case
  - ☒ MI InterAgency Transfer
  - ☐ No Fee per MCR 7.203(F)(2)

Filer Office Use Only: 2013

The documents listed above were electronically filed with the Michigan Court of Appeals at the date/time stated in the left margin. As a recipient of service of these documents, you may wish to go to <https://wiznet.wiznet.com/appealsmi> to register as a user of the electronic filing system.



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Lower Court or Tribunal Ingham Circuit Court	STATE OF MICHIGAN IN THE COURT OF APPEALS <b>Proof of Service</b>	CASE NO.	Year	Number	Case Type
		CIRCUIT:	13	734	CZ
		COURT OF APPEALS:			

Case Name: Gracie Webster and Veronica Thomas v Rick Snyder, Andy Dillon, and State of Michigan

On 7/19/2013, one copy of the following documents:

Application Emergency Application for Leave to Appeal

was delivered to the persons listed below:

Date

7/19/2013

Signature

/s/Aimee L. Nelson

Bar Number	Name	Delivery Method	Service Address
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P- 30417	Canzano, John R	Email	jcanzano@michworklaw.com
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STATE OF MICHIGAN  
IN THE COURT OF APPEALS

GRACIE WEBSTER and  
VERONICA THOMAS,

Plaintiffs-Appellees,

v

RICK SNYDER, as the Governor of the  
State of Michigan, ANDY DILLON, as the  
Treasurer of the State of Michigan, and the  
STATE OF MICHIGAN,

Defendants-Appellants,

Docket No.  
Case No. 13-734-CZ  
Hon. Rosemarie Aquilina

**This appeal involves a ruling  
prohibiting State governmental  
action. Emergency relief  
requested under MCR 7.205(E).**

---

**ACTION REQUIRED BY THE END OF BUSINESS FRIDAY, JULY 19, 2013**

**DEFENDANTS RICKY SNYDER, AND DILLON, AND THE STATE OF  
MICHIGANS' EMERGENCY APPLICATION FOR LEAVE TO APPEAL**

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Counsel of Record

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(517) 373-1162

Dated: July 19, 2013.

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## STATEMENT OF QUESTION PRESENTED

1. Whether the trial court abused its discretion by preliminarily enjoining Defendants from taking "any action in aid and assistance" of the City of Detroit's Chapter 9 bankruptcy proceeding, where the filing of the petition rendered Plaintiffs' claim moot, and where Plaintiffs failed to satisfy the requirements for issuance of an injunction.

Appellants' answer: Yes.

Appellees' answer: No.

Trial court's answer: No.

## STATEMENT OF JURISDICTION

Defendants Governor Rick Snyder, Treasurer Andy Dillon, and the State of Michigan seek leave to appeal a July 18, 2013 temporary restraining order issued by Ingham County Circuit Court Judge Rosemarie Aquilina that enjoins Defendants from taking any actions that would threaten Plaintiffs' city pensions in relation to the City of Detroit's bankruptcy proceeding. (Exhibit 1.)

This Court has jurisdiction to grant leave to appeal under MCR 7.202(6)(a) and MCR 7.203(B)(1), and the application was timely filed under MCR 7.205(A)(1).



## INTRODUCTION

At 4:06 p.m. on July 18, 2013, the Governor and the Emergency Manager for the City of Detroit gave the City a chance at a fresh start by filing a petition to initiate Chapter 9 bankruptcy proceedings in federal court. The petition is the culmination of weeks and months of careful review of the City's astonishingly poor financial condition, estimated to include \$18-\$20 *billion* in debt, more than 43 other *states*. The filing represents the City's only option for solving its longstanding fiscal crises, and it will require sacrifice.

But just minutes later, at 4:25 p.m., the trial court issued a temporary restraining order (TRO) enjoining the Governor, the Treasurer, and the State from Defendants from taking any actions that would aid the City of Detroit's Chapter 9 bankruptcy proceeding. (Exhibit 1.) This injunction is unlawful for a number of reasons.

First, Plaintiffs' complaint and request for relief, which seek to declare the Local Financial Stability and Choice Act (Act), MCL 141.1541, *et seq.* unconstitutional and prohibit the Governor from authorizing the City to proceed under Chapter 9, is now moot. The Governor has authorized the bankruptcy proceeding and the petition has been filed. Neither the Governor, nor the other Defendants, have any further role with respect to the bankruptcy proceeding.

Second, Plaintiffs failed to satisfy any of the factors for granting injunctive relief. In particular, Plaintiffs have no likelihood of success on the merits of their claims where they lack standing, their claim is not ripe, and their facial constitutional challenge to the Act fails as a matter of law. And Plaintiffs failed to

show any irreparable harm since it is entirely speculative at this time regarding whether Plaintiffs' pensions benefits will be diminished or impaired in bankruptcy.

Defendants respectfully request that this Court grant leave to appeal, dissolve the TRO, and stay all proceedings in the trial court in this and two companion cases, so that the Detroit bankruptcy may proceed and Plaintiffs' merits claims may be litigated in the proper forum—bankruptcy court.

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## STATEMENT OF FACTS AND PROCEEDINGS BELOW

Plaintiffs, as beneficiaries of the City of Detroit's pension system, brought a facial constitutional challenge to the Act asserting that it is unconstitutional because it permits the Governor to authorize a proceeding in Chapter 9 bankruptcy, allegedly in violation of article 9, § 24 of the 1963 Constitution.<sup>1</sup> They seek a declaratory judgment that the Act "is unconstitutional and in violation of [art 9, § 24] of the Michigan Constitution because [the Act] permits accrued pension benefits to be diminished or impaired by bankruptcy proceedings in direct contravention of the Constitution." (Exhibit 2, Complaint, ¶ 1.) Plaintiffs moved for an expedited hearing on their request for declaratory relief, or requested in the alternative a preliminary injunction enjoining the Governor from authorizing a bankruptcy proceeding under the Act.

Section 18(1), MCL 141.1558(1), of the Act provides:

If, in the judgment of the emergency manager, no reasonable alternative to rectifying the financial emergency of the local government which is in receivership exists, then the emergency manager may recommend to the governor and the state treasurer that the local government be authorized to proceed under chapter 9. If the governor approves of the recommendation, the governor shall inform the state treasurer and the emergency manager in writing of the decision, with a copy to the superintendent of public instruction if the local government is a school district. The governor may place contingencies on a local government in order to proceed under chapter 9.

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<sup>1</sup> Article 9, § 24 of the 1963 Constitution provides, in part: "The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby."

Plaintiffs allege they are entitled to declaratory relief and a final judgment that the Act is unconstitutional because the Act does not prohibit the Governor from authorizing a Chapter 9 bankruptcy, which threatens to diminish or impair Plaintiffs' accrued pension benefits contrary to art 9, § 24. (Exhibit 2, Complaint, ¶26.) Plaintiffs request relief and ask the trial court to intrude on the Governor's authority to authorize a bankruptcy proceeding; and that the City's pension funds might be detrimentally affected during a Chapter 9 proceeding in federal bankruptcy court. (Exhibit 2, Complaint, ¶27 and 28.) The trial court scheduled a hearing on Plaintiffs' motion for an expedited declaratory judgment on July 22, 2013.

But on July 16, 2013, the Emergency Manager for the City recommended to the Governor that the City be authorized to proceed under Chapter 9 of Title 11 to the United States Code, as permitted by section 18(1) of the Act. (Exhibit 3, Governor Letter.) And late in the day on July 18, 2013, the Governor approved the recommendation and authorized the Emergency Manager to proceed on behalf of the City in bankruptcy. *Id.*

At 4:06 p.m. the Emergency Manager filed the City's petition with the United States Bankruptcy Court for the Eastern District of Michigan. (Exhibit 4, Petition.) Before the actual filing, however, Plaintiffs appeared in the trial court seeking a TRO in connection with their prior motion for expedited declaratory relief and/or for a preliminary injunction. (Exhibit 5, Motion.) Defendants were notified of the request for TRO, and appeared at the trial court to argue against its issuance.

Ultimately, the trial court issued a TRO at 4:25 p.m. despite knowing that the petition had already been filed (a fact that meant the automatic stay of all state-court proceedings had already begun). The trial court denied Defendants' motion to stay. (Exhibit 6, Order.)

Because the trial court abused its discretion in issuing the TRO, Defendants file the instant emergency application for leave to appeal along with motions to stay the TRO, stay the proceedings, waive the transcript requirement, and for immediate consideration.

## ARGUMENT

- I. **The trial court abused its discretion by enjoining Defendants from taking “any further action” that would diminish or impair Plaintiffs’ pension benefits where the filing of the City of Detroit’s bankruptcy petition renders their claim moot, and where Plaintiffs failed to satisfy the requirements for issuance of a TRO.**

A. **Standard of Review**

Injunctive relief is an extraordinary remedy that issues only when justice requires, there is no adequate remedy at law, and there exists a real and imminent danger of irreparable injury. MCR 3.310(A); *Davis v City of Detroit Financial Review Team*, 296 Mich App 568, 613-614; 821 NW2d 896 (2012); *Michigan Coalition of State Employee Unions, et al v Civil Service Commission*, 465 Mich 212, 226, n 11; 634 NW2d 692 (2001). To obtain a temporary or preliminary injunction, a plaintiff must prove that (1) he is likely to prevail on the merits; (2) he will be irreparably harmed if an injunction is not issued; (3) the harm to him absent an injunction outweighs the harm that an injunction would cause the defendants; and (4) there will be no harm to the public interest if an injunction is issued. *Detroit Fire Fighters Ass’n v Detroit*, 482 Mich 18, 34; 753 NW2d 579 (2008). A court’s exercise of its discretion to consider injunctive relief may not be arbitrary, but rather must be in accordance with the fixed principles of equity jurisdiction and the evidence in the case. *Jeffrey v Clinton Twp*, 195 Mich App 260, 263; 489 NW2d 211 (1992). When seeking injunctive relief, the plaintiff has the burden of proof on each of these factors. MCR 3.310(A)(4). Plaintiffs did not meet their burden here, and their motion should have been denied.

**B. Plaintiffs' constitutional challenge to the Local Financial Stability and Choice Act and request for relief are moot.**

"An issue is . . . moot when a judgment, if entered, cannot for any reason have a practical effect on the existing controversy." *Gen Motors Corp v Dep't of Treasury*, 290 Mich App 355, 386; 803 NW2d 698 (2010). Here, Plaintiffs' Complaint asked the trial court to declare the Act unconstitutional because it permits the Governor to authorize the City to proceed in Chapter 9 bankruptcy, allegedly in violation of article 9, § 24 of the 1963 Constitution. (Exhibit 2, Complaint.) Plaintiffs asked the Court to declare or prohibit the Governor and Treasurer from authorizing the bankruptcy. *Id.*<sup>2</sup>

These requests are moot because the Governor has now authorized the Emergency Manager to proceed in bankruptcy, and the petition has been filed. The Defendants have no further duties with respect to the City's bankruptcy proceeding in federal court. Section 18(1) of the Act, MCL 141.1558(1), expressly "empowers the emergency manager to act *exclusively* on the local government's behalf in any such case under chapter 9." (Emphasis added.) Thus, there is no judgment the trial court could issue in this case that would have a practical effect on the alleged controversy.<sup>3</sup> Indeed, the TRO will have no practical effect with respect to

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<sup>2</sup> Although Plaintiffs requested that relief be issued against Defendant Dillon, Defendant Dillon has no authority to authorize a bankruptcy, only the Governor may do so. MCL 141.1558(1).

<sup>3</sup> Moreover, courts avoid reaching constitutional issues if alternative means are available for deciding a case. See *Stewart v Algonac Savings Bank*, 263 Mich 272, 284; 248 NW 619 (1933); *Rinaldi v Civil Service Comm*, 69 Mich App 58, 69; 244 NW2d 609 (1976) ("We will not undertake a constitutional analysis when we can avoid it.").

Plaintiffs' claims because, again, the Defendants have no further duties pertaining to the bankruptcy. Because Plaintiffs' Complaint is moot, the trial court abused its discretion in granting the TRO.

**C. Plaintiffs failed to satisfy the requirements for granting injunctive relief.**

**1. No substantial likelihood of success on the merits.**

Plaintiffs cannot demonstrate a substantial likelihood of success on the merits of their claim that the Act is unconstitutional under article 9, § 24 because their requested injunctive relief is premature and overbroad; they lack standing; their claim is unripe; and, their facial constitutional challenge fails as a matter of a law.

**a. Plaintiffs' request for injunctive relief was premature and overbroad.**

A court is "at all times [ ] required to question sua sponte its own jurisdiction (whether over a person, the subject matter of an action, *or the limits on the relief it may afford*)." *Straus v Governor*, 459 Mich 526, 532; 592 NW2d 53 (1999), quoting *Straus v Governor*, 230 Mich App 222; 583 NW2d 520 (1998) (citation omitted) (emphasis added). In *Strauss*, the Michigan Supreme Court, in adopting this Court's opinion, expressed "doubt with respect to the propriety of injunctive relief against the Governor," and observed that "separation of powers principles, preclude *mandatory* injunctive relief, mandamus, against the Governor." *Id.* (citations omitted) (emphasis added). The Court further observed that whether the same



reasoning also precludes “*prohibitory* injunctive relief” was an open question “that need not be resolved in [that] case.” *Id.* (emphasis added). However, the Court also recognized, if not emphasized that

declaratory relief normally will suffice to induce the legislative and *executive* branches, the principal members of which have taken oaths of fealty to the constitution identical to that taken by the judiciary, to conform their actions to constitutional requirements or confine them within constitutional limits. *Only when declaratory relief has failed should the courts even begin to consider additional forms of relief in these situations.* [*Id.* (emphasis added). See also *Davis v City of Detroit Financial Review Team*, 296 Mich App 568, 614, 632-635; 821 NW2d 896 (2012) (O’Connell, J., concurring).]

Thus, there is essentially a presumption that injunctive relief, of any kind, may not be entered against the Governor unless declaratory relief has failed. That principle controls here, because Plaintiffs did not first attempt to secure declaratory relief and, only then, seek injunctive relief. Their request for an injunction should have been denied as premature.

Plaintiffs’ request for injunctive relief should also have been denied because it was overbroad. The trial court entered the following TRO:

Defendants are immediately and temporarily enjoined and restrained from taking any action (including the authorization of an unconditional bankruptcy proceeding for the City of Detroit and/or the filing of a Chapter 9 bankruptcy), *or taking any further action with respect to any filing which has already occurred that may:* (i) cause the accrued financial benefits of the Retirement System or their participants from *in any way* being diminished or impaired as mandated by Article IX, section 24, of the Michigan Constitution, or (ii) otherwise abrogate Article IX, section 24, of the Michigan Constitution. [Exhibit 1 (emphasis added).]

As noted above, the Governor had already concluded his duty with respect to the bankruptcy filing at the time the TRO was issued and the Treasurer never had

any duties under section 18(1) to begin with. But each continue to have obligations and duties to perform with respect to the State of Michigan, its agencies, and citizens. The language of the injunction is broad (or vague) enough to encompass general actions taken by these Defendants in their executive capacities. Thus, Plaintiffs' request should have been denied to the extent it is overbroad and not narrowly tailored to the facts and legal arguments.

**b. Plaintiffs' lack standing to bring this action.**

In *Lansing School Education Ass'n v Lansing Board of Education*, 487 Mich 349, 355, 372; 792 NW2d 686 (2010), the Michigan Supreme Court reinstated Michigan's previous "prudential" standing test, which automatically conferred standing upon any party who has a "legal cause of action," regardless of whether the underlying issue is justiciable. "Under this approach, a litigant has standing whenever there is a legal cause of action" or the requirements of MCR 2.605 to seek a declaratory judgment are satisfied. *Id.* at 372. If a specific cause of action at law does not exist for the plaintiff, then the following applies:

A litigant may have standing in this context if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant. [*Id.*]

In this case, Plaintiffs cannot meet even this liberalized standard.

**i. Plaintiffs have not pled facts sufficient to establish a legal cause of action.**

Plaintiffs have not pled facts sufficient to establish that a violation of their rights under article 9, § 24 has occurred or to establish that a cause of action exists under the Act; they do not even attempt to do so. Indeed, the Act expressly states that it provides no cause of action: "A cause of action . . . may not be maintained for any activity authorized by this act, or for the act of a local government filing under chapter 9, including any proceeding following a local government's filing." MCL 141.1572 (emphasis added).

Moreover, there are other additional contingencies that would need to occur before any "threat" to Plaintiffs' pension benefits could arise. For instance:

- Even with the filing of a bankruptcy action, the City of Detroit must meet additional requirements before the case may proceed including completing a Plan of Reorganization to adjust its debts. The City must satisfy one of four requirements: (1) obtain an agreement from creditors holding a majority of the amount of claims of each class the debtor intends to impair under a plan, (2) negotiate in good faith with creditors and fail to obtain an agreement of creditors holding a majority of the amount of claims of each class the debtor intends to impair under a plan, (3) be unable to negotiate with creditors because it is impractical, or (4) reasonably believe a creditor may attempt to obtain a preference. 11 USC 109(c); and
- The plan must be confirmed by the bankruptcy court. The plan must meet seven specific criteria for confirmation, including that "the debtor is not prohibited by law from taking any action necessary to carry out the plan." 11 USC 943(4).

No violation of article 9, § 24 occurred or could have occurred when the Governor authorized the City of Detroit to proceed under Chapter 9, because the bankruptcy court will have to find the City eligible for bankruptcy, and then the court would still have to approve a plan in bankruptcy that impairs vested pension benefits, or at least have such a plan presented to it.

Ignoring these contingencies, Plaintiffs' fact assertions center upon their alleged apprehension as to what *might* happen. Plaintiffs contend they are entitled to a declaratory judgment that the Act is facially unconstitutional because it "nowhere requires that in considering whether to approve an emergency manager's recommendation to proceed under Chapter 9, the Governor shall not approve such recommendation if accrued pension benefits may be diminished or impaired in violation of [art 9, § 24]." (Exhibit 2, Complaint, ¶¶ 18 and 19.) Accordingly, Plaintiffs assert, "because [the Act] does not prohibit a municipality from proceeding under Chapter 9 of the US Bankruptcy Code if accrued pension benefits may be unconstitutionally diminished or impaired, [the Act] is unconstitutional on its face in violation of" art 9, § 24. *Id.* This allegation mistakes the scope of the "authorization"—it is not approval of the actual bankruptcy filing or plan—and presumes the Governor would act unconstitutionally.

Plaintiffs further allege that their:

[R]ights under the Michigan Constitution not to have their pension benefits "diminished or impaired" can only be guaranteed if this Court acts *before* the Governor approves a request to proceed under Chapter 9. Moreover, Emergency Manager Orr's threats that he will unconstitutionally diminish or impair Plaintiffs' vested pension rights have themselves harmed Plaintiffs by instilling in Plaintiffs a reasonable fear that their constitutional rights will be trampled upon and, in the process, their future source of income drastically eroded. [Exhibit 2, Complaint, ¶ 28.]

But the trial court cannot assume what the contents of the City's plan might be, or that the federal bankruptcy court will approve a plan that will diminish or impair Plaintiffs' pension benefits. In any event, Plaintiffs will have an opportunity to fully litigate the merits of their claim in the bankruptcy proceeding itself.

Because Plaintiffs' claim is based on a speculative threat of future injury, they have failed to allege a legal cause of action for which they have standing to seek relief from this Court. *Lansing School Education Ass'n*, 487 Mich at 372.

**ii. Plaintiffs do not meet the requirements of MCR 2.605.**

With respect to declaratory judgment actions, MCR 2.605(A)(1) provides:

In a case of *actual controversy* within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted. [Emphasis added.]

MCR 2.605 "does not limit or expand the subject-matter jurisdiction of the courts, but instead incorporates the doctrines of standing, ripeness, and mootness." *UAW v Central Mich Univ Trustees*, 295 Mich App 486, 495; 815 NW2d 132 (2012). "The existence of an 'actual controversy' is a condition precedent to invocation of declaratory relief." *Shavers v Attorney General*, 402 Mich 554, 588; 267 NW2d 72 (1978); see also *Genesis Ctr, PLC v Comm'r of Financial & Ins Servs*, 246 Mich App 531, 544; 633 NW2d 834 (2001). "An 'actual controversy' . . . exists when a declaratory judgment is necessary to guide a plaintiff's future conduct in order to preserve legal rights. The requirement prevents a court from deciding hypothetical issues." *UAW*, 295 Mich App at 495 (citations omitted) (footnotes omitted). "The essential requirement of an 'actual controversy' under the rule is that the plaintiff pleads and proves facts that demonstrate an "'adverse interest necessitating the sharpening of the issues raised.'" *Id.* (citations omitted) (footnotes omitted).

Presently, the possibility of whether Plaintiffs' pension benefits might be

impacted somewhere in the future during the bankruptcy proceeding is purely speculative. And in any event, by authorizing the bankruptcy proceeding the Governor concluded his duties under section 18(1) of the Act. Thus, the Plaintiffs' interests and the Governor's, Treasurer's, and State's interests are no longer adverse (if they ever were), and therefore no sharpening of the issues through issuance of a declaratory judgment is required. Plaintiffs have failed to satisfy the requirements of MCR 2.605, and do not have standing. *Lansing School Education Ass'n*, 487 Mich at 372.

- iii. **Plaintiffs have not established a special injury, right, or substantial interest that will be detrimentally affected in a manner different from that of the citizenry at large.**

Even where there is no cause of action provided at law, a court may, in its discretion, determine whether a litigant has standing. *Lansing Schools*, 487 Mich at 372. This requires a showing that the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant.

Here, as noted above, the Legislature did not intend to confer standing on any person to challenge the Act. Rather, it expressly provided that there is no cause of action under the Act in MCL 141.1572. And any interest Plaintiffs have may not even be detrimentally affected by the bankruptcy filing. Such impact will not be



known until a plan is proposed and Plaintiffs have litigated the merits of their constitutional claim in the bankruptcy case.

Bankruptcy Code provisions applicable to a Chapter 9 bankruptcy are set forth under 11 USC 901(a). For instance, § 943, 11 USC 943, of the Bankruptcy Code regulates confirmation of a debtor's plan of adjustment. Section 943(b) sets forth seven criteria that must be met before a federal Bankruptcy Court can confirm the plan. The fourth and seventh criteria are noteworthy here. The fourth criteria requires the bankruptcy court determine "the debtor is not prohibited by law from taking any action necessary to carry out the plan." 11 USC 943(b)(4). The seventh criteria requires a determination that the plan be in the best interest of creditors, and that it be feasible. 11 USC 943(b)(7).

At this time, it is purely speculative as to whether a plan will be confirmed that detrimentally affects Plaintiffs' interests. Plaintiffs therefore do not have standing. *Lansing School Education Ass'n*, 487 Mich at 372.

**c. Plaintiffs' alleged constitutional claim is not ripe for review.**

While both standing and ripeness are justiciability doctrines that assess pending claims to discern whether an actual or imminent injury in fact is present, they address different underlying concerns. *Michigan Chiropractic Council v Comm'r of Ins*, 475 Mich 363, 378-379; 716 NW2d 561 (2006). The standing doctrine "is designed to determine whether a particular party may properly litigate the asserted claim for relief." *Id.*, at 379. The ripeness doctrine, on the other hand,





“A facial challenge is a claim that the law is ‘invalid *in toto* - and therefore incapable of any valid application. . . .’” *In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71*, 479 Mich 1, 11 n 20; 740 NW2d 444 (2007) (citation omitted) (emphasis in original). “A party challenging the facial constitutionality of a statute faces an extremely rigorous standard, and must show that no set of circumstances exists under which the [a]ct would be valid.” *Id.* at 11 (internal quotation marks and citation omitted). Plaintiffs cannot satisfy this standard.

As discussed above, § 18(1) of the Act, MCL 141.1558(1), simply authorizes an emergency manager to recommend, and the Governor to authorize, proceeding under Chapter 9. It is silent with respect to what course of action an emergency manager should pursue in bankruptcy, including how a local government unit’s assets and liabilities should be treated in bankruptcy. And relevant here, it does not require any particular treatment of pension funds. Indeed, § 18 does not even mention or allude to pension funds. Compare this to § 12(1)(m), MCL 141.1552(1)(m), of the Act, which describes an emergency manager’s authority and duties with respect to a “municipal government’s pension fund.” Thus, nothing in the Act compels or requires any impairment of Plaintiffs’ pension benefits contrary to article 9, § 24. The Act is therefore not facially unconstitutional.

Moreover, Plaintiffs clearly cannot establish “that no set of circumstances exists under which the [a]ct would be valid,” because the Governor could place a contingency eliminating pension funds, payments and liabilities from a Chapter 9

proceeding, although he did not do so with respect to the City. Additionally, the City may not include the pension funds, payments and liabilities in its plan; or the federal court may determine that federal bankruptcy law controls the analysis. Plaintiffs' facial constitutional challenge to the Act thus fails as a matter of law.

**2. Plaintiffs did not demonstrate irreparable harm.**

Again, if justiciable, Plaintiffs' underlying claim in this case may be raised in the federal Bankruptcy Court in the context of the actual bankruptcy plan during the confirmation process and not in the state trial court. 11 USC 943. Plaintiffs' legal claims would ripen only if and when a bankruptcy proceeding includes a possible reduction or adverse impact on their pension benefits. It is in that forum, in the context of the specific bankruptcy plan, that these legal issues should be addressed and resolved. Because Plaintiffs have a legal remedy—litigation in the context of the bankruptcy action—they will not suffer irreparable harm absent an injunction by the trial court.

**3. The injunction's harm to Defendants outweighs the harm to Plaintiffs in the absence of an injunction.**

Plaintiffs retain their access to the remedies set forth in the federal Bankruptcy Code without need of court-granted injunctive relief. Conversely, the trial court's preliminary injunction would substantially harm Defendants. The entry of this injunction violates the separation of powers doctrine. Const 1963, art 3, § 2. Thus, the relief unlawfully intrudes on the Governor's executive powers to authorize a Chapter 9 bankruptcy under § 18 of the Act. The breadth of the

injunction may inhibit the Emergency Manager and the City of Detroit from properly prosecuting this bankruptcy action. A balancing of the relative harms counsels against injunctive relief, particularly where Plaintiffs can fully litigate their claims in the bankruptcy forum.

**4. The TRO harms the public interest.**

In most disputes involving requested injunctive relief, the parties focus on the merits of the underlying claim and the presence or absence of irreparable harm, paying only lip service to the impact on the public. This is no ordinary case. Due to the City of Detroit's unsustainable debt load, the City has lost the ability to provide even the most basic services to its residents. Citizens wait an average of 58 minutes for the police to respond to their calls. Only 8.7% of criminal cases are solved. In the first quarter of 2013, 40% of the City's street lights were not functioning, and only one-third of the City's ambulances were in service. This is a city that needs and deserves a fresh start. By ignoring fundamental principles of justiciability and the basic elements required to grant injunctive relief, the trial court jeopardizes public safety and welfare. Given the gravity of the situation, it is difficult to imagine a trial court order with more potential to harm the public interest.

**5. Defendants request emergency relief under MCR 7.205(E)(2).**

Given the fact that this is an injunction against the Governor and the other exigencies of the circumstances related to the City's bankruptcy proceeding,

Defendants request that this application be resolved on an emergency basis under MCR 7.205(E)(2). Specifically, Defendants request relief by 5:00 p.m. on July 19, 2013, or at the latest by 9:00 a.m. on July 22, 2013. The trial court has scheduled a hearing on July 22, 2013 at 9:00 a.m., for Defendants to show cause in this case and in *The General Retirement System of the City of Detroit v Orr et al.*, 13-768-CZ, also on appeal, as to why a declaratory judgment and/or a preliminary injunction should not issue against Defendants in these matters.

### CONCLUSION AND RELIEF REQUESTED

Defendants respectfully ask this Court, by the close of business today or at the latest by 9:00 a.m. on July 22, 2013, to (1) grant the application for leave to appeal, (2) immediately dissolve the TRO, and (3) stay all proceedings in this trial court action and its two companion cases. Nothing less is at stake than the future of Michigan's largest city.

Respectfully submitted,

Bill Schuette  
Attorney General

John J. Bursch (P57679)  
Solicitor General  
Counsel of Record

Matthew Schneider (P62190)  
Chief Legal Counsel

s/Margaret A. Nelson (P30342)  
s/Heather S. Meingast (P55439)  
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Dated: July 19, 2013.

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## EXHIBIT 1

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

THE GENERAL RETIREMENT SYSTEM  
OF THE CITY OF DETROIT, and THE  
POLICE AND FIRE RETIREMENT  
SYSTEM OF THE CITY OF DETROIT,

*Gracie Webster  
and Veronica Thomas*

Plaintiffs,

Case No. 13-768-CZ

13-000734-CZ  
C30

vs.

*State of Michigan*

Hon. *Rosemarie*

*Aquilina*

~~KEVYN D. ORR~~, in his official capacity as the  
EMERGENCY MANAGER OF THE CITY OF  
DETROIT, and RICHARD SNYDER, in his  
official capacity as the GOVERNOR OF THE  
STATE OF MICHIGAN,

*and Andy Dillon*

Defendants.

*Treasury in his official capacity*

Ronald A. King (P45088)  
Aaron O. Matthews (P64744)  
Michael J. Pattwell (P72419)  
CLARK HILL PLC  
212 East Grand River Avenue  
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(517) 318-3100  
Attorneys for Plaintiffs

*John R Canzano P32417  
McKnight, McCloy, Canzano Smith  
& Radtke PC  
400 Galleria Office Center*

TEMPORARY RESTRAINING ORDER

At a session of said Court, held in the City of  
Lansing, County of Ingham, State of Michigan  
on 18 July 13

PRESENT: HON.

*Rosemarie Aquilina*  
CIRCUIT COURT JUDGE

*and having appeared  
during the hearing  
in 13-000734  
for a TRO*

This matter having come before the Court on Plaintiffs' Complaint with verification and  
*Declaratory Judgment and Preliminary Injunction*  
*Ex Parte* Motion for a Temporary Restraining Order; the Court being fully advised in the  
premises; Plaintiffs having shown a likelihood of success on the merits of the claims in

Plaintiffs' Complaint; Plaintiff having adequately shown that a failure to immediately issue a Temporary Restraining Order will cause irreparable injury to Plaintiffs by permitting the Governor and the Emergency Manager ("Defendants") to authorize and file a Chapter 9 bankruptcy petition wherein Plaintiffs' accrued financial benefits will be impaired prior this Court's scheduled preliminary injunction hearing on Monday, July 22, 2013; and the Court being otherwise fully informed in the premises and finding good cause;

IT IS HEREBY ORDERED that Plaintiffs' Motion is granted;

IT IS FURTHER ORDERED that Defendants are immediately and temporarily enjoined and restrained from taking any action (including the authorization of an unconditional Chapter 9 bankruptcy proceeding for the City of Detroit and/or the filing of a Chapter 9 bankruptcy petition) that may: (i) cause the accrued financial benefits of the Retirement System or their participants from in any way being diminished or impaired as mandated by Article IX, section 24, of the Michigan Constitution, or (ii) otherwise abrogate Article IX, section 24, of the Michigan Constitution;

IT IS FURTHER ORDERED that the Court shall hold a hearing on July 22, 2013 at 9:00 AM whereby Defendants shall show cause why a Declaratory Judgment and/or Preliminary Injunction shall not issue; and

IT IS FURTHER ORDERED that this temporary restraining order shall remain in full force and effect until further order of the Court, 2013 at 5:00 p.m.

IT IS SO ORDERED.

DATE: 18 July 13

TIME: 4:25 p.m.

Rosemarie E. Aquilina  
CIRCUIT COURT JUDGE

P37670



## EXHIBIT 2

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

GRACIE WEBSTER and  
VERONICA THOMAS,

Plaintiffs,

vs

Case No.

Hon.

13-734-CZ  
CLINTON CANADY III

THE STATE OF MICHIGAN;  
RICHARD SNYDER, as Governor  
of the State of Michigan; and  
ANDY DILLON, as Treasurer of  
the State of Michigan,

Defendants.

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JOHN R. CANZANO (P30417)  
McKNIGHT, McCLOW, CANZANO,  
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A civil action between these parties or  
other parties arising out of the transaction  
or occurrence alleged in the Complaint has  
been previously filed in this Court,  
where it was given docket number 13-729-CA  
and was assigned to Judge Aquilina.  
The action remains pending.

**VERIFIED COMPLAINT FOR**  
**DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

**NATURE OF ACTION**

1. This action seeks a declaratory judgment that the "Local Financial Stability and  
Choice Act," 2012 PA 436, MCL 141.1541 *et seq* ("PA 436") is unconstitutional and in violation of

Article IX Section 24 of the Michigan Constitution because PA 436 permits accrued pension benefits to be diminished or impaired by bankruptcy proceedings in direct contravention of the Constitution. This action also seeks a preliminary and/or final injunction enjoining the Governor and/or the State Treasurer from authorizing a bankruptcy proceeding permitting an unconstitutional diminishment or impairment of accrued pension benefits under PA 436.

### PARTIES, JURISDICTION AND VENUE

2. Plaintiff Gracie Webster is a retiree from the City of Detroit. She retired in 2000 and is receiving a pension benefit under the City of Detroit's General Retirement System Pension Plan. She resides in Detroit and is a citizen of the State of Michigan.

3. Plaintiff Veronica Thomas is an employee of the City of Detroit. She has worked for the City for 17 years. She is a participant in the City of Detroit's General Retirement System Pension Plan. Although she has not yet retired, based on her years of service Plaintiff Thomas has earned the right to an accrued vested pension benefit under the terms of the pension plan.

4. Defendant State of Michigan is a governmental entity and sovereign state of the United States, retaining all powers reserved to it under the 10<sup>th</sup> Amendment to the United States Constitution.

5. Defendant Richard Snyder is the Governor of the State of Michigan acting in his official capacity.

6. Defendant Andy Dillon is Treasurer of the State of Michigan acting in his official capacity.

7. The Governor may delegate his duties under Section 9 of PA 436, MCL 141.1549 to the State Treasurer.

8. This court has jurisdiction under MCL 600.6419(4), which provides for the jurisdiction of circuit courts in proceedings for declaratory or equitable relief against the State, and

MCL 600.605, which provides original jurisdiction in the circuit courts.

9. Venue is proper in this court under MCL 600.1621(a), because Defendants conduct business in Ingham County.

### COUNT I: DECLARATORY JUDGMENT

#### **PA 436 Is Unconstitutional Because It Permits Accrued Pension Benefits To Be Diminished Or Impaired In Direct Violation Of Article IX, Section 24 Of The Michigan Constitution**

10. Article IX Section 24 of the Michigan Constitution provides in pertinent part:

The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof **which shall not be diminished or impaired** thereby.

11. PA 436 was enacted by the Michigan Legislature on December 28, 2012 and became effective March 28, 2013.

12. Among the purposes of PA 436, as stated in its preamble, are to "prescribe remedial measures to address a financial emergency within a local unit of government;" "to prescribe the powers and duties of an emergency manager for a local unit of government;" and "to provide a process by which a local unit of government . . . may file for bankruptcy."

13. On March 14, 2013, Defendant Snyder appointed Kevyn Orr as Emergency Financial Manager for the City of Detroit, pursuant to 1990 PA 72, MCL 141.1201 *et seq* ("PA 72"). PA 436 is a successor statute to, and expressly repeals, PA 72.

14. Pursuant to Sec 9(10) of PA 436, MCL 141.1549(10), Kevyn Orr, as an emergency financial manager appointed under former 1990 PA 72 "and serving immediately prior to the effective date of this act, shall be considered an emergency manager under this act [PA 436] and shall continue under this act to fulfill his or her powers and duties."

15. Chapter 9 of the U.S. Bankruptcy Code, 11 USC §§901 *et seq*, provides a process by

which a municipality may file for bankruptcy and become a debtor under Chapter 9 in federal bankruptcy court.

16. However, in order to protect state sovereignty and in recognition of federalism principles under the 10<sup>th</sup> Amendment to the U.S. Constitution, Chapter 9 of the Bankruptcy Code prohibits municipalities from filing for bankruptcy unless the municipality "is specifically authorized, in its capacity as a municipality or by name, to be a debtor under such chapter by State law, or by a governmental officer or organization empowered by State law to authorize such entity to be a debtor under such chapter." Absent such authorization, federal bankruptcy courts have no jurisdiction under Chapter 9 over a municipality as a debtor. 11 USC §109(c)(2). See *Ashton v Cameron County Water Improvement Dist No 1*, 298 US 513; 56 S Ct 892; 80 L Ed 1309 (1936); and *United States v Bekins*, 304 US 27, 58 S Ct 811; 82 L Ed 1137 (1938).

17. Section 18 of PA 436, MCL 141.1558, specifically authorizes a local unit of government to become a debtor in a Chapter 9 bankruptcy proceeding if the emergency manager for the local government recommends to the Governor and the State Treasurer that the local government be authorized to proceed under Chapter 9, and if the Governor approves the recommendation by informing the emergency manager and State Treasurer in writing of his decision.

18. PA 436 nowhere requires that in considering whether to approve an emergency manager's recommendation to proceed under Chapter 9, the Governor shall not approve such recommendation if accrued pension benefits may be diminished or impaired in violation of Article IX Section 24 of the Michigan Constitution.

19. Accordingly, because PA 436 does not prohibit a municipality from proceeding under Chapter 9 of the U.S. Bankruptcy Code if accrued pension benefits may be unconstitutionally diminished or impaired, PA 436 is unconstitutional on its face in violation of Article IX Section 24 of the Michigan Constitution.

20. Section 11 of PA 436, MCL 141.1551, provides that "an emergency manager shall develop and may amend a written financial operating plan for the local government [and that] [t]he financial and operating plan shall provide for . . . [t]he timely deposit of required payments to the pension fund for the local government or in which the local government participates."

21. On May 12, 2013, Emergency Manager Orr issued a financial and operating plan pursuant to Section 11 of PA 436. (Available at [www.freep.com/assets/freep/pdf/C4205233512.pdf](http://www.freep.com/assets/freep/pdf/C4205233512.pdf).) The plan does not schedule the "timely deposit of required payments" to the pension funds as required by Section 11 of PA 436, but instead notes that payments have been deferred to manage a liquidity crisis.

22. On June 14, 2013, Emergency Manager Orr issued a "Proposal for Creditors" in which he presents various restructuring options. (Available at <http://www.freep.com/assets/freep/pdf/C4206913614.pdf>.) Nowhere in this document does Emergency Manager Orr indicate any intent to comply with Article IX Sec 24 of the Michigan Constitution. Instead, in direct contravention of the Michigan Constitution, the proposal expressly states that "*there must be significant cuts in accrued, vested pension amounts for both active and currently retired persons.*"

23. Emergency Manager Orr has publicly threatened, in a June 14-interview with the Detroit Free Press Editorial Board, that vested pension benefits will be abrogated in a Chapter 9 proceeding authorized by the Governor pursuant to PA 436, and that any state law protecting vested pension benefits is "not going to protect" retirees or employees with vested pension benefits in bankruptcy court. (See [www.freep.com/article/20130616/OPINION05/306160052/kevyn-orr-detroit-emergency-manager-creditors-fiscal-crisis](http://www.freep.com/article/20130616/OPINION05/306160052/kevyn-orr-detroit-emergency-manager-creditors-fiscal-crisis).)

24. Article IX Section 24 of the Michigan Constitution is such a state law, which Emergency Manager Orr has asserted will "not . . . protect" vested pension benefits.



25. Under PA 436, the only way Emergency Manager Orr could impose his desired "significant cuts in accrued, vested pension amounts for both active and currently retired persons" is through a Chapter 9 bankruptcy filing.

26. Plaintiffs are entitled to a declaratory judgment that PA 436 is unconstitutional under Article IX Section 24 of the Michigan Constitution because PA 436 does not prohibit the Governor from authorizing a Chapter 9 bankruptcy filing which threatens to unconstitutionally diminish or impair the Plaintiffs' accrued pension benefits, and a final judgment ordering that Defendant Snyder and/or Defendant Dillon not authorize a Chapter 9 filing which threatens to diminish or impair accrued pension benefits in violation of the Michigan Constitution.

27. This case presents an actual controversy entitling Plaintiffs to a declaratory judgment because the facts stated above indicate "an adverse interest necessitating the sharpening of the issues raised." *Lansing School Education Ass'n v Lansing Bd of Educ*, 487 Mich 349, 372 n20; 792 NW2d 686 (2010), quoting *Associated Builders and Contractors v Dep't of Consumer and Indus Servs Dir*, 472 Mich 117, 126; 693 NW2d 374 (2005). Plaintiffs are entitled to a declaratory judgment here "to obtain adjudication of rights before an actual injury occurs [and] to settle a matter before it ripens into a violation of the law . . ." *Rose v State Farm Mut Auto Ins Co*, 274 Mich App 291, 294; 732 NW2d 160 (2006).

28. Plaintiffs need for a Declaratory Judgment is urgent. Based on the above facts, a request by the Emergency Manager to proceed under Chapter 9 is imminent, because he has credibly threatened – indeed, has given every indication – that he intends to impair or diminish accrued pension benefits in contravention of Article IX Section 24 of the Michigan Constitution, and that Chapter 9 bankruptcy proceedings are the mechanism by which he can do so. Thus Plaintiffs' rights under the Michigan Constitution not to have their pension benefits "diminished or impaired" can

only be guaranteed if this Court acts *before* the Governor approves a request to proceed under Chapter 9. Moreover, Emergency Manager Orr's threats that he will unconstitutionally diminish or impair Plaintiffs' vested pension rights have themselves harmed Plaintiffs by instilling in Plaintiffs a reasonable fear that their constitutional rights will be trampled upon and, in the process, their future source of income drastically eroded.

29. Accordingly, Plaintiffs are entitled to a speedy hearing under MCR 2.605(D) on their request for declaratory relief.

### COUNT II: PRELIMINARY INJUNCTION

30. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 29 above.

31. Plaintiffs will suffer irreparable harm if Defendants Snyder and Dillon are not enjoined from authorizing the Emergency Manager to proceed under Chapter 9 of the U.S. Bankruptcy Code and thereby seeking to abrogate Plaintiffs' rights under the Michigan Constitution and the source of livelihood it guarantees them in a forum which the Emergency Manager contends does not protect those rights.

32. The harm to Plaintiffs absent injunctive relief outweighs the harm to Defendants if an injunction is granted because the Governor and Treasurer will not be harmed if they are enjoined from authorizing the Emergency Manager to file under Chapter 9.

33. Plaintiffs are likely to succeed on the merits.

34. There will be harm to the public interest absent an injunction, as the accrued vested pension rights of thousands of City of Detroit retirees and employees will be threatened with abrogation in violation of the Michigan Constitution.



RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that this Honorable Court grant the following relief:

- A. A declaratory judgment that PA 436 is unconstitutional in violation of Article IX Section 24 of the Michigan Constitution.
- B. A preliminary and/or permanent injunction enjoining Defendant Snyder and Defendant Dillon from authorizing the Detroit Emergency Manager to commence proceedings under Chapter 9 of the U.S. Bankruptcy Code.
- C. An award to Plaintiffs of their costs and expenses, including attorneys' fees, incurred in this action.

Respectfully submitted,

McKNIGHT, McCLOW, CANZANO,  
SMITH & RADTKE, P.C.

By: \_\_\_\_\_

John R. Canzano (P30417)  
Attorneys for Plaintiffs  
400 Galleria Officentre, Suite 117  
Southfield, MI 48034  
248-354-9650  
jcanzano@michworklaw.com

Date: July 3, 2013

VERIFICATION

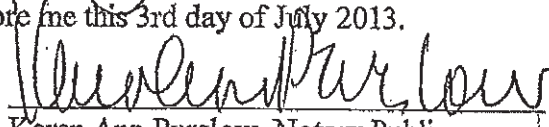
STATE OF MICHIGAN     )  
  )ss  
COUNTY OF OAKLAND    )

John R. Canzano, being first duly sworn, deposes and states he is the attorney representing Plaintiffs herein; that he has read the foregoing verified complaint by him subscribed for and on

behalf of Plaintiffs; that he knows the contents thereof to be true except as to those matters stated upon information and belief, and as to those matters, he believes them to be true, and he is authorized to sign said Verified Complaint on behalf of Plaintiffs.

  
John R. Canzano

Subscribed and sworn to before me this 3rd day of July 2013.

  
Karen Ann Purslow, Notary Public  
County of Oakland, State of Michigan  
My Commission Expires: April 19, 2014



## EXHIBIT 3



STATE OF MICHIGAN  
EXECUTIVE OFFICE  
LANSING

RICK SNYDER  
GOVERNOR

BRIAN CALLEY  
LT. GOVERNOR

VIA HAND AND ELECTRONIC DELIVERY

July 18, 2013

Kevyn D. Orr  
Emergency Manager  
City of Detroit  
Coleman A. Young Municipal Center  
2 Woodward Ave., Suite 1126  
Detroit, MI 48226

Andrew Dillon  
State Treasurer  
Michigan Department of Treasury  
4th Floor Treasury Building  
430 W. Allegan Street  
Lansing, MI 48992

Re: Authorization to Commence Chapter 9 Bankruptcy Proceeding

Dear Mr. Orr and Mr. Dillon,

I have reviewed Mr. Orr's letter of July 16, 2013, requesting my approval of his recommendation to commence a bankruptcy proceeding for the City of Detroit under Chapter 9 of title 11 of the United States Code. As you know, state law requires that any such recommendation must first be approved by the Governor before the emergency manager may take that step. MCL 141.1558. For the reasons discussed below, I hereby approve that recommendation and authorize Mr. Orr to make such a filing.

**Current Financial Emergency**

In reviewing Mr. Orr's letter, his Financial and Operating Plan, and his report to creditors, it is clear that the financial emergency in Detroit cannot be successfully addressed outside of such a filing, and it is the only reasonable alternative that is available. In other words, the City's financial emergency cannot be satisfactorily rectified in a reasonable period of time absent this filing.

I have reached the conclusion that this step is necessary after a thorough review of all the available alternatives, and I authorize this necessary step as a last resort to return this great City to financial and civic health for its residents and taxpayers. This decision comes in the wake of 60 years of decline for the City, a period in which reality was often

July 18, 2013

ignored. I know many will see this as a low point in the City's history. If so, I think it will also be the foundation of the City's future – a statement I cannot make in confidence absent giving the City a chance for a fresh start, without burdens of debt it cannot hope to fully pay. Without this decision, the City's condition would only worsen. With this decision, we begin to provide a foundation to rebuild and grow Detroit.

Both before and after the appointment of an emergency manager, many talented individuals have put enormous energy into attempting to avoid this outcome. I knew from the outset that it would be difficult to reverse 60 years of decline in which promises were made that did not reflect the reality of the ability to deliver on those promises. I very much hoped those efforts would succeed without resorting to bankruptcy. Unfortunately, they have not. We must face the fact that the City cannot and is not paying its debts as they become due, and is insolvent.

After reading Mr. Orr's letter, the Financial and Operating Plan, and the report to creditors, I have come to four conclusions.

1. Right now, the City cannot meet its basic obligations to its citizens.
2. Right now, the City cannot meet its basic obligations to its creditors.
3. The failure of the City to meet its obligations to its citizens is the primary cause of its inability to meet its obligations to its creditors.
4. The only feasible path to ensuring the City will be able to meet obligations in the future is to have a successful restructuring via the bankruptcy process that recognizes the fundamental importance of ensuring the City can meet its basic obligations to its citizens.

I will explain how I came to each conclusion.

**Inability to Meet Obligations to Its Citizens.** As Mr. Orr's Financial and Operating Plan and the June 14 Creditor Proposal have noted, the scale and depth of Detroit's problems are unique. The City's unemployment rate has nearly tripled since 2000 and is more than double the national average. Detroit's homicide rate is at the highest level in nearly 40 years, and it has been named as one of the most dangerous cities in America for more than 20 years. Its citizens wait an average of 58 minutes for the police to respond to their calls, compared to a national average of 11 minutes. Only 8.7% of cases are solved, compared to a statewide average of 30.5%. The City's police cars, fire trucks, and ambulances are so old that breakdowns make it impossible to keep up the fleet or properly carry out their roles. For instance, only a third of the City's ambulances were in service in the first quarter of 2013. Similarly, approximately 40% of the City's street lights were not functioning in that quarter and the backlog of complaints is more than 3,300 long. Having large swaths of largely abandoned structures -- approximately 78,000 -- creates additional public safety problems and reduces the quality of life in the City. Mr. Orr is correct that meeting the obligations the City has to

its citizens to provide basic services requires more revenue devoted to services, not less.

**Inability to Meet Obligations to Its Creditors.** The City has more than \$18 billion in accrued obligations. A vital point in Mr. Orr's letter is that Detroit tax rates are at their current legal limits, and that even if the City was legally able to raise taxes, its residents cannot afford to pay additional taxes. Detroiters already have a higher tax rate than anywhere in Michigan, and even with that revenue the City has not been able to keep up with its basic obligations, both to its citizens and creditors. Detroit simply cannot raise enough revenue to meet its current obligations, and that is a situation that is only projected to get worse absent a bankruptcy filing.

**Failure to Meet Obligations to Citizens Creates Failure to Meet Obligations to Creditors.** Mr. Orr's letter and prior report put in stark reality the dramatic impact of the City's plummeting population. While many who love Detroit still live there, many other Detroiters at heart could not justify the sacrifice of adequate services. The City's population has declined 63% from its peak, including a 28% decline since 2000. That exodus has brought Detroit to the point that it cannot satisfy promises it made in the past. A decreasing tax base has made meeting obligations to creditors impossible. Mr. Orr is correct when he says the City cannot raise the necessary revenue through tax increases, and it cannot save the necessary revenue through reducing spending on basic services. Attempts to do so would only decrease the population and tax base further, making a new round of promises unfulfillable.

**Only One Feasible Path Offers a Way Out.** The citizens of Detroit need and deserve a clear road out of the cycle of ever-decreasing services. The City's creditors, as well as its many dedicated public servants, deserve to know what promises the City can and will keep. The only way to do those things is to radically restructure the City and allow it to reinvent itself without the burden of impossible obligations. Despite Mr. Orr's best efforts, he has been unable to reach a restructuring plan with the City's creditors. I therefore agree that the only feasible path to a stable and solid Detroit is to file for bankruptcy protection.

The past weeks have reaffirmed my confidence that Mr. Orr has the right priorities when it comes to the City of Detroit. I am reassured to see his prioritization of the needs of citizens to have improved services. I know we share a concern for the public employees who gave years of service to the City and now fear for their financial future in retirement, and I am confident that all of the City's creditors will be treated fairly in this process. We all believe that the City's future must allow it to make the investment it needs in talent and in infrastructure, all while making only the promises it can keep. Let us remain in close communication regarding measures Mr. Orr might take so we can discuss the possible impacts that might occur both within and outside of the City.



July 18, 2013

Contingencies

2012 PA 436 provides that my approval of the recommendation to commence a Chapter 9 proceeding may place contingencies on such a filing. MCL 141.1558(1). I am choosing not to impose any such contingencies today. Federal law already contains the most important contingency – a requirement that the plan be legally executable. 11 USC 943(b)(4).

Conclusion

In conclusion, I find Mr. Orr's Recommendation Letter to be persuasive, especially in conjunction with his prior reports laying out the level of services the City can provide and its financial ability to meet its obligations to creditors. I am also convinced that Mr. Orr has exercised his best efforts to arrive at a restructuring plan with the City's creditors outside of bankruptcy, to no avail. Given these facts, the only feasible path to sustainability for the City of Detroit is a filing under chapter 9 of the bankruptcy code. Therefore, I hereby approve Mr. Orr's recommendation and authorize the emergency manager to make such a filing on behalf of the City of Detroit and to take all actions that are necessary and appropriate toward that end.

Sincerely,



Richard D. Snyder  
Governor  
State of Michigan

## EXHIBIT 4



UNITED STATES BANKRUPTCY COURT  
Eastern District of Michigan

In re:

City of Detroit, Michigan,

Debtor.

Case No. 13-

**BANKRUPTCY PETITION COVER SHEET**

(The debtor must complete and file this form with the petition in every bankruptcy case. Instead of filling in the boxes on the petition requiring information on prior and pending cases, the debtor may refer to this form.)

**Part 1**

"Companion cases," as defined in L.B.R. 1073-1(b), are cases involving any of the following: (1) The same debtor; (2) A corporation and any majority shareholder thereof; (3) Affiliated corporations; (4) A partnership and any of its general partners; (5) An individual and his or her general partner; (6) An individual and his or her spouse; or (7) Individuals or entities with any substantial identity of financial interest or assets.

Has a "companion case" to this case ever been filed at any time in this district or any other district? Yes ☐ No ☒  
(If yes, complete Part 2.)

**Part 2**

For each companion case, state in chronological order of cases:

*Not applicable*

If the present case is a Chapter 13 case, state for each companion case:

*Not applicable*

**Part 3 - In a Chapter 13 Case Only**

The Debtor(s) certify, re: 11 U.S.C. § 1328(f):  
[indicate which]

*Not Applicable*

- ☐ Debtor(s) received a discharge issued in a case filed under Chapter 7, 11, or 12 during the 4-years before filing this case.
- ☐ Debtor(s) did not receive a discharge issued in a case filed under Chapter 7, 11, or 12 during the 4-years before filing this case.
- ☐ Debtor(s) received a discharge in a Chapter 13 case filed during the 2-years before filing this case.
- ☐ Debtor(s) did not receive a discharge in a Chapter 13 case filed during the 2-years before filing this case.

I declare under penalty of perjury that I have read this form and that it is true and correct to the best of my information and belief.

Kevyn D. Orr  
Emergency Manager  
City of Detroit

David G. Helman (OH 0038271)  
Heather Lennox (OH 0059649)  
JONES DAY  
North Point  
901 Lakeside Avenue  
Cleveland, OH 44114  
Telephone: (216) 586-3939  
Facsimile: (216) 579-0212  
dghelman@jonesday.com  
hlennox@jonesday.com

Bruce Bennett (CA 105430)  
JONES DAY  
555 South Flower Street  
Fifteenth Floor  
Los Angeles, CA 90071  
Telephone: (213) 243-2382  
Facsimile: (213) 243-2539  
bbennett@jonesday.com

Jonathan S. Green (MI P33140)  
Stephen S. LaPlante (MI P48063)  
MILLER, CANFIELD, PADDOCK  
AND STONE, P.L.C.  
150 West Jefferson  
Suite 2500  
Detroit, MI 48226  
Telephone: (313) 963-6420  
Facsimile: (313) 496-7500  
jgreen@millercaanfield.com  
laplante@millercaanfield.com

Date: July 18, 2013

ATTORNEYS FOR THE CITY OF DETROIT, MICHIGAN

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN

## VOLUNTARY PETITION

Name of Debtor (if individual, enter Last, First, Middle): <b>City of Detroit, Michigan</b>		Name of Joint Debtor (Spouse) (Last, First, Middle):	
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names):		All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names):	
Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN)/Complete EIN (if more than one, state all): <b>38-6004606</b>		Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN)/Complete EIN (if more than one, state all):	
Street Address of Debtor (No. and Street, City, and State): <b>2 Woodward Avenue Suite 1126 Detroit, Michigan</b>		Street Address of Joint Debtor (No. and Street, City, and State):	
<b>48226</b>		<b>ZIP CODE</b>	
County of Residence or of the Principal Place of Business: <b>Wayne</b>		County of Residence or of the Principal Place of Business:	
Mailing Address of Debtor (if different from street address):		Mailing Address of Joint Debtor (if different from street address):	
<b>ZIP CODE</b>		<b>ZIP CODE</b>	
Location of Principal Assets of Business Debtor (if different from street address above):			
<b>ZIP CODE</b>			
<b>Type of Debtor</b> (Form of Organization) (Check one box.) <input type="checkbox"/> Individual (includes Joint Debtors) <i>See Exhibit D on page 2 of this form.</i> <input type="checkbox"/> Corporation (includes LLC and LLP) <input type="checkbox"/> Partnership <input checked="" type="checkbox"/> Other (If debtor is not one of the above entities, check this box and state type of entity below.) <b>Municipality</b>		<b>Nature of Business</b> (Check one box.) <input type="checkbox"/> Health Care Business <input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101(51B) <input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Clearing Bank <input checked="" type="checkbox"/> Other	
<b>Chapter 15 Debtors</b> Country of debtor's center of main interests:  Each country in which a foreign proceeding by, regarding, or against debtor is pending:		<b>Chapter of Bankruptcy Code Under Which the Petition is Filed (Check one box.)</b> <input type="checkbox"/> Chapter 7 <input checked="" type="checkbox"/> Chapter 9 <input type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Chapter 13 <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Main Proceeding <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding	
<b>Chapter 15 Debtors</b> Country of debtor's center of main interests:  Each country in which a foreign proceeding by, regarding, or against debtor is pending:		<b>Tax-Exempt Entity</b> (Check box, if applicable.) <input type="checkbox"/> Debtor is a tax-exempt organization under title 26 of the United States Code (the Internal Revenue Code).	
<b>Nature of Debts</b> (Check one box.) <input type="checkbox"/> Debts are primarily consumer debts, defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose." <input checked="" type="checkbox"/> Debts are primarily business debts.			
<b>Filing Fee (Check one box.)</b> <input checked="" type="checkbox"/> Full Filing Fee attached. <input type="checkbox"/> Filing Fee to be paid in installments (applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A. <input type="checkbox"/> Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.		<b>Chapter 11 Debtors</b> <b>Check one box:</b> <input type="checkbox"/> Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). <input type="checkbox"/> Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D). <b>Check if:</b> <input type="checkbox"/> Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,490,925 (amount subject to adjustment on 4/01/16 and every three years thereafter). <b>Check all applicable boxes:</b> <input type="checkbox"/> A plan is being filed with this petition. <input type="checkbox"/> Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).	
<b>Statistical/Administrative Information</b> <input checked="" type="checkbox"/> Debtor estimates that funds will be available for distribution to unsecured creditors. <input type="checkbox"/> Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.			THIS SPACE IS FOR COURT USE ONLY
<b>Estimated Number of Creditors</b> <input type="checkbox"/> 1-49 <input type="checkbox"/> 50-99 <input type="checkbox"/> 100-199 <input type="checkbox"/> 200-999 <input type="checkbox"/> 1,000-5,000 <input type="checkbox"/> 5,001-10,000 <input type="checkbox"/> 10,001-25,000 <input type="checkbox"/> 25,001-50,000 <input type="checkbox"/> 50,001-100,000 <input checked="" type="checkbox"/> Over 100,000			
<b>Estimated Assets</b> <input type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input type="checkbox"/> \$1,000,001 to \$10 million <input type="checkbox"/> \$10,000,001 to \$50 million <input type="checkbox"/> \$50,000,001 to \$100 million <input type="checkbox"/> \$100,000,001 to \$500 million <input type="checkbox"/> \$500,000,001 to \$1 billion <input checked="" type="checkbox"/> More than \$1 billion			
<b>Estimated Liabilities</b> <input type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input type="checkbox"/> \$1,000,001 to \$10 million <input type="checkbox"/> \$10,000,001 to \$50 million <input type="checkbox"/> \$50,000,001 to \$100 million <input type="checkbox"/> \$100,000,001 to \$500 million <input type="checkbox"/> \$500,000,001 to \$1 billion <input checked="" type="checkbox"/> More than \$1 billion			

<b>Voluntary Petition</b> (This page must be completed and filed in every case.)		Name of Debtor(s): <b>City of Detroit, Michigan</b>	
All Prior Bankruptcy Cases Filed Within Last 8 Years (If more than two, attach additional sheet.)			
Location Where Filed:	Case Number:	Date Filed:	
Location Where Filed:	Case Number:	Date Filed:	
Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor (If more than one, attach additional sheet.)			
Name of Debtor:	Case Number:	Date Filed:	
District:	Relationship:	Judge:	
<b>Exhibit A</b> (To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.)  <input type="checkbox"/> Exhibit A is attached and made a part of this petition.		<b>Exhibit B</b> (To be completed if debtor is an individual whose debts are primarily consumer debts.)  I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I have delivered to the debtor the notice required by 11 U.S.C. § 342(b).  X _____ Signature of Attorney for Debtor(s) (Date)	

**Exhibit C**

Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?

☒ Yes, and Exhibit C is attached and made a part of this petition.

☐ No.

**Exhibit D**

(To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.)

☐ Exhibit D, completed and signed by the debtor, is attached and made a part of this petition.

If this is a joint petition:

☐ Exhibit D, also completed and signed by the joint debtor, is attached and made a part of this petition.

**Information Regarding the Debtor - Venue**  
(Check any applicable box.)

☒ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.

☐ There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

☐ Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.

**Certification by a Debtor Who Resides as a Tenant of Residential Property**  
(Check all applicable boxes.)

☐ Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.)


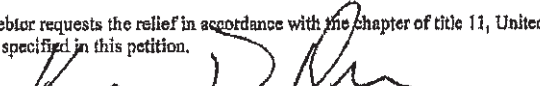
\_\_\_\_\_  
(Name of landlord that obtained judgment)

\_\_\_\_\_  
(Address of landlord)

☐ Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and

☐ Debtor has included with this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition.

☐ Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(f)).

<b>Voluntary Petition</b> <i>(This page must be completed and filed in every case.)</i>		Name of Debtor(s): <u>City of Detroit, Michigan</u>	
<b>Signatures</b>			
<b>Signature(s) of Debtor(s) (Individual/Joint)</b>  I declare under penalty of perjury that the information provided in this petition is true and correct. [If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7. [If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. § 342(b).  I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.  X _____ Signature of Debtor  X _____ Signature of Joint Debtor  Telephone Number (if not represented by attorney)  Date		<b>Signature of a Foreign Representative</b>  I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.  (Check only one box.) <input type="checkbox"/> I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. § 1515 are attached. <input type="checkbox"/> Pursuant to 11 U.S.C. § 1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.  X _____ (Signature of Foreign Representative)  _____ (Printed Name of Foreign Representative)	
X  Signature of Attorney for Debtor(s)  <div style="display: flex; justify-content: space-between;"> <div style="width: 30%;"> <b>David G. Helman</b>  <b>Heather Lennox</b>            JONES DAY            North Point            901 Lakeside Avenue            Cleveland, OH 44114            Tel: (216) 586-3939            Fax: (216) 579-0212  <a href="mailto:dgelman@jonesday.com">dgelman@jonesday.com</a>  <a href="mailto:hlennox@jonesday.com">hlennox@jonesday.com</a> </div> <div style="width: 30%;"> <b>Bruce Bennett</b>            JONES DAY            555 South Flower Street            Fiftieth Floor            Los Angeles, CA 90071            Tel: (213) 243-2382            Fax: (213) 243-2539  <a href="mailto:bbennett@jonesday.com">bbennett@jonesday.com</a> </div> <div style="width: 30%;"> <b>Jonathan S. Green</b>  <b>Stephen S. LaPlante</b>            MILLER, CANFIELD            PADDOCK AND STONE,            P.L.C.            150 West Jefferson            Suite 2500            Detroit, MI 48226            Tel: (313) 963-6420            Fax: (313) 496-7500  <a href="mailto:green@millercanfield.com">green@millercanfield.com</a>  <a href="mailto:laplante@millercanfield.com">laplante@millercanfield.com</a> </div> </div> <u>July 18, 2013</u> Date  <small>*In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.</small>		<b>Signature of Non-Attorney Bankruptcy Petition Preparer</b>  I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19 is attached.  _____ Printed Name and title, if any, of Bankruptcy Petition Preparer  _____ Social-Security number (If the bankruptcy petition preparer is not an individual, state the Social-Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)  _____ Address  X _____ Signature  _____ Date  Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social-Security number is provided above.  Names and Social-Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual.  If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.  <i>A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.</i>	
<b>Signature of Debtor (Corporation/Partnership)</b>  I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.  The debtor requests the relief in accordance with the chapter of title 11, United States Code, specified in this petition.  X  Signature of Authorized Individual  <u>Kervyn B. Orr</u> Printed Name of Authorized Individual  <u>Emergency Manager, City of Detroit</u> Title of Authorized Individual  <u>July 18, 2013</u> Date			



*[If, to the best of the debtor's knowledge, the debtor owns or has possession of property that poses or is alleged to pose a threat of imminent and identifiable harm to the public health or safety, attach this Exhibit "C" to the petition.]*

## UNITED STATES BANKRUPTCY COURT

## Eastern District of Michigan

In re City of Detroit, Michigan,, ) Case No. 13-  
Debtor. )  
)  
) Chapter 9

**EXHIBIT "C" TO VOLUNTARY PETITION**

1. Identify and briefly describe all real or personal property owned by or in possession of the debtor that, to the best of the debtor's knowledge, poses or is alleged to pose a threat of imminent and identifiable harm to the public health or safety (attach additional sheets if necessary):

Certain properties owned by City of Detroit, Michigan (the "City") have been (a) identified by the City as being structurally unsound and in danger of collapse and (b) scheduled for demolition (collectively, the "Demolition Properties"). The Demolition Properties may pose a threat of imminent harm to public health and/or safety. A list of the Demolition Properties is attached hereto as Schedule 1.

To its knowledge, the City currently does not own any property that is a Superfund Site as designated by the United States Environmental Protection Agency. The City currently owns (in whole or in part) various so-called "Brownfields properties" (collectively, the "Brownfields Properties") regulated by the Michigan Department of Environmental Quality. Currently, one or more private parties (rather than the City) are addressing any identified environmental conditions that might be present at the Brownfields Properties. To the City's knowledge, none of the Brownfields Properties are alleged to pose a threat of imminent and identifiable harm to the public health or safety. A representative list of certain Brownfields Properties is attached hereto as Schedule 2.

In addition to the foregoing, the City owns or is possession of approximately 60,000 parcels of land within the City's geographic boundaries and more than 7,000 vacant structures that are not designated as Demolition Properties or Brownfields Properties (collectively, the "Blighted Properties"). It is possible that some of the Blighted Properties could pose a threat to public health or safety. Although the City is not aware of any Blighted Properties currently posing a threat of "imminent and identifiable harm," the City notes the existence of these properties on this Exhibit C out of an abundance of caution.

2. With respect to each parcel of real property or item of personal property identified in question 1, describe the nature and location of the dangerous condition, whether environmental or otherwise, that poses or is alleged to pose a threat of imminent and identifiable harm to the public health or safety (attach additional sheets if necessary):

See attached Schedule 1 with respect to the Demolition Properties and the attached Schedule 2 with respect to the Brownfields Properties.

**SCHEDULE 1****City of Detroit, Michigan Demolition Properties**

<u>Street Address</u>	<u>Property Type</u>
3922 14 <sup>th</sup>	Residential
3654 30 <sup>th</sup>	Residential
12032 Abington	Residential
2668 Anderdon	Residential
821 Anderson	Commercial
13501 Appoline	Residential
7593 Arcola	Residential
14125 Ardmore	Residential
13476 Arlington	Residential
13544 Arlington	Residential
10384 Aurora	Residential
2457 Beaubien	Commercial
2486 Beaubien	Residential
14371 Bentler	Residential
5317 Bewick	Residential
19411 Blake	Residential
19700 Bloom	Residential
6072 Braden	Residential
9665 Broadstreet	Residential
9616 Bryden	Residential
6810 Bulwer	Commercial
1454 Burlingame	Residential
13469 Caldwell	Residential
2009 Campbell	Residential
14203 E. Canfield	Residential
19221 Cardoni	Residential
19324 Carrie	Residential
7626 Central	Residential
2535 Chalmers	Residential
8115 Chamberlain	Residential
13199 Charest	Residential
20190 Charleston	Residential
3164 Charlevoix	Commercial
5083 Chatsworth	Residential
5717 Chene	Commercial
3636 Cicotte	Residential
3032 Clements	Residential
1117 Concord	Residential
6628 Crane	Residential
1243 Crawford	Residential
2012 Dalzelle	Residential
20258 Danbury	Residential
7787 Dayton	Residential
8475 Dearborn	Residential
1950 Dearing	Residential
1956 Dearing	Residential
1960 Dearing	Residential
2027 Dearing	Residential
8839 Dennison	Residential

<u>Street Address</u>	<u>Property Type</u>
20245 Derby	Residential
125 Dey	Residential
14190 Dolphin	Residential
229 Edmund Pl.	Commercial
3333 Edsel	Residential
203 Erskine	Residential
209 Erskine	Residential
4417 Ewers	Residential
19332 Exeter	Residential
19339 Exeter	Residential
20467 Exeter	Residential
1731 Fischer	Residential
13556 Fleming	Residential
7666 W. Fort	Commercial
5334 French Rd.	Residential
6007 Frontenac	Commercial
18627 Gable	Residential
3727 Garland	Residential
3917 Garland	Residential
4466 Garland	Residential
4470 Garland	Residential
4003 Gilbert	Residential
12511 Glenfield	Residential
14232 Goddard	Residential
14239 Goddard	Residential
11648 Grandmont	Residential
5801 Grandy [1]	Commercial
5801 Grandy [2]	Commercial
2937 Grant	Residential
5589 Guilford	Residential
222 S. Harbaugh	Residential
2900 Harding	Residential
8815 Harper	Commercial
17226 Hasse	Residential
7975 Hathon	Residential
19227 Havana	Residential
19309 Havana	Residential
19321 Havana	Residential
19397 Havana	Residential
7886 Helen	Residential
6200 Hereford	Residential
9905 Herkimer	Residential
1955 Highland	Residential
1778 Holcomb	Residential
4407 Holcomb	Residential
4412 Holcomb	Residential
7202 Holmes	Residential
9278 Holmur	Residential
19925 Hoover	Commercial